

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**NATIONAL FIRE AND MARINE
INSURANCE COMPANY,**

Plaintiff,

v.

**LEE LINDEMANN, *Special Administrator of the
Estate of Sue Ann Lindeman*, and ST.**

**ELIZABETH'S HOSPITAL OF THE SISTERS
OF THE THIRD ORDER OF ST. FRANCIS,**

Defendants;

Case No. 15-cv-910-DRH-DGW

And,

**ST. ELIZABETH'S HOSPITAL OF THE
SISTERS OF THE THIRD ORDER OF ST.
FRANCIS,**

Cross-Claimant

v.

**ERICK FALCONER, MIDWEST EMERGENCY
DEPARTMENT SERVICE, INC., NATIONAL FIRE
AND MARINE INSURANCE COMPANY, and WESTERN
HEALTHCARE, LLC.**

Cross-Defendants;

And,

**MIDWEST EMERGENCY DEPARTMENT
SERVICE, INC.,**

Cross-Claimant.

ORDER

HERNDON, District Judge:

Pending before the Court is Plaintiff National Fire and Marine Insurance Company's motion for summary judgment (Doc. 133). St. Elizabeth's Hospital has responded and oppose the motion as premature (Doc. 135). For the reasons stated below, the Court **DENIES as premature** National Fire's motion for summary judgment (Doc. 133).

FEDERAL RULE OF CIVIL PROCEDURE RULE 56(d) provides:

"When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order."

Based a review of the pleadings, St. Elizabeth's Hospital makes a sufficient showing of good cause for their inability to respond to National Fire and Marine Insurance Company's motion at this time. Given the Court's September 27, 2017 Order (Doc. 140) directing that National Fire produce the underwriting file and the claim file, and the pending motion regarding enforcement of that Order (Doc. 152), which is currently under advisement, defendants contend that issues of material fact clearly remain in this case, and more importantly, National Fire is in possession of information and documents pertaining to issues relevant to the motion for summary judgment. Accordingly, the Court **DENIES without**

prejudice National Fire's motion for summary judgment (Doc. 133). National Fire may refile its motion after the completion of discovery in this case, if it so chooses.

IT IS SO ORDERED.

David R. Herndon



Digitally signed by
Judge David R. Herndon
Date: 2017.11.13
13:26:29 -06'00'

United States District Court Judge